Writ Appeal No.1894 of 2005

Per G. Bhavani Prasad, J

This is an appeal for setting aside order dated 16.9.2005 passed by the learned Single Judge, vide which he dismissed Writ Petition No.11962 of 2005 filed by the appellant for quashing orders dated 9.10.2004, 17.2.2005 and 29.5.2005 passed by Revenue Divisional Officer, Markapur, Prakasam District (Respondent No.3), Joint Collector, Prakasam (Respondent No.2) and District Collector, Prakasam (Respondent No.1) respectively, under the Andhra Pradesh Public Distribution Control Order, 2001 (hereinafter described as 'the Control Order').

The appellant was appointed as Fair Price Shop Dealer for C. Kothapalli Village, Pullalacheruvu Mandal, Prakasam District some time in 1996. In July, 2004, Mandal Revenue Officer, Pullalachervu Mandal sent a report to respondent No.3 stating therein that the appellant had committed several irregularities as fair price shop dealer. Thereupon, respondent No.3 issued show cause notice to the appellant and suspended her authorization. On appeal, respondent No.2 vide his order dated 1.9.2004 directed respondent No.3 to complete the enquiry and pass appropriate order within one month. Thereafter, respondent No.3 passed order dated 9.10.2004 vide which he cancelled the authorization of the appellant. The appeal and revision filed by the appellant were dismissed by respondent Nos.2 and 1 respectively, vide their orders dated 17.2.2005 and 29.5.2005.

The appellant questioned the above noted orders in Writ Petition No.11962 of 2005 mainly on the ground of violation of the rules of natural justice. She averred that respondent No.3 ordered cancellation of her authorization without adverting to the points taken by her in reply to the show cause notice and without recording a specific finding on the charges enumerated in the show cause notice. She further pleaded that respondent No.3 could not have cancelled her authorization on the basis of vague allegation that there were irregularities in the distribution of essential commodities.

In the counter-affidavit filed on behalf of the respondents it was averred that on receipt of complaint regarding the irregularities committed by the appellant in her capacity as fair price shop dealer, an enquiry was got conducted through Mandal Revenue Officer who submitted report with the finding that the fair price shop was being run by her husband and that he was selling the essential commodities at higher prices. On receipt of the report, notice was issued to the appellant and after due consideration of her defence, the order of cancellation was passed.

The learned Single Judge vide his order dated 16.9.2005 dismissed the writ petition by observing that the order of cancellation passed by respondent No.3 cannot be treated as illegal merely because the petitioner (appellant herein) was not afforded opportunity of personal hearing. The learned Single Judge observed that the appellant has neither pleaded nor she has proved that the violation of the rules of natural justice had prejudiced her cause.

We have heard learned counsel for the parties and carefully perused the record.

The charges leveled against the appellant, which have also been incorporated in order dated 9.10.2004 were as under:

> "Charge No.1: That the dealer not distributing the ECs properly and running the shop by her husband and he is doing his cultivation and without opening shop properly and causing much inconvenience to the card holders and thereby contravened Cl.4(1)(2) of authorization.
>
> Charge No.2: That the dealer has not obtained D.Ds within the time and selling commodities with higher price than the Govt. fixed price and thereby contravened Cl.7 of authorization.

The appellant filed detailed reply controverting the allegations. The relevant extracts of her reply dated 27.7.2004 read as under:

> Regarding Charge No.1: This respondent submits that there is no proof for this charge and it is also false to say her husband is doing cultivation and not opening the shop properly. But the dealer's husband assisting her only at the time of distribution of commodities to the card holders, hence the dealer has not contravened Cl.4(1)(2) of the authorization and this charge is not applicable to her.
>
> Regarding Charge No.2: This respondent submits that she has obtained D.Ds and submitted within the time in the MRO Office and also she has not selling ECs at higher rates fixed than the Govt. and

this charge does not disclose any basis for framing that charge. It is only due to political pressure, with the ulterior motive of removing this respondent from dealership to the opposite group, this disciplinary proceedings are initiated, without justification.

This respondent submits that due to political pressure and at the instance of opposite group who are seriously trying for removal of dealership of the appellant and get the appointment in favour of their followers and without any justification, this Hon'ble R.D.O. passed orders in RCH/1127/2004, suspended the dealership of this respondent. As against that, this respondent has already filed an appeal before the Joint Collector, Ongole and in the appeal, this respondent contended that without giving any show cause notice or calling for explanation, the order of suspension was passed. Therefore, to fill up those lacunae, the present show cause notice is issued without any material.

In his order, respondent No.3 did make a mention of the reply filed by the appellant, but without appreciating the same and without holding that the charges levelled against the appellant have been proved, the officer concerned cancelled the authorization by recording the following observations:

"As per the above information and after verifying the records that the said F.P. Shop dealer has committed some irregularities in the distribution of essential commodities and violated the government conditions in running the F.P. Shop and as per the P.D.S. Control Order, 2001 you have violated the conditions and your authorization is cancelled as F.P. Shop dealer of C. Kothapalli village."

Respondents 2 and 1 did pass detailed orders but they travelled beyond the scope of the allegations levelled against the appellant as is evident from the following extracts of orders passed by them:

Extracts of order dated 7.2.2005 passed by respondent No.2:

Regarding first issue after going through the records it is noticed that the two charges framed are on the basis of enquiry conducted by the Mandal Revenue Inspector on 5.7.2004 in which about 30 card holders have stated that the dealer is not properly distributing commodities and selling at higher rates. Hence the basis appears to be proper. Regarding second issue, the cardholders have complained that the dealer is selling commodities at higher rates. The dealer in her

written explanation has only said that she is not selling Essential Commodities at higher rates and that due to political pressure this disciplinary proceedings are initiated which does not appears to be a convincing reply and she also did not produce any documentary or any other evidence to prove her point. Public Distribution System has been started to provide Essential Commodities at subsidized prices to people below poverty line who cannot afford to buy basic food items at market price. If the dealer starts selling these Essential Commodities to BPL people at higher rates as stated by consumers in this case it totally violates the essence of the Public Distribution System. Hence the charge is serious enough to cancel the dealership. Hence I have no reason to interfere with the orders of Revenue Divisional Officer. Accordingly the appeal is disposed of and the stay granted earlier is hereby vacated. "

Extracts of order dated 29.5.2005 passed by respondent No.1:

The Joint Collector, Ongole in his orders clearly stated that the fair price shop dealer has not produced any documentary evidence to show that she has not charged higher rates from the card holders and also for not distributing ECs properly to the card holders. The fair price shop dealer should have produced the sales register for the months of 6/2004 and 7/2004 to show the amount charged from the card holders while taking signatures of dealers and also about the quantity distributed to the card holders as per their entitlement. When it specifically stated that the F.P. Shop dealer failed to produce documentary evidence to show that she has not charged higher rates for the essential commodities, non-filing of sales registers by the F.P. Shop dealer clearly go to show that the dealer has sold the commodities at higher rates than fixed by the Government to the B.P.L. cardholders. By filing sale register, the non-distribution of commodities properly will also reflect in the sales registers as it contains the quantity supplied, rate charged by the dealer with the signature or thumb impression of the card holders.

In the absence of any documentary evidence produced by the F.P. Shop dealer, it is proved beyond doubt that the F.P.Shop dealer has not distributed E.Cs properly to the card holders and also supplying E.Cs at higher rates than fixed by the Government which clearly defeats the subsidized scheme being implemented by the Government to have some help to the B.P.L. card holders to have a square meal for the families to be benefited under the scheme.

The Revenue Divisional Officer, Markapur has issued specific show cause notice on 16.7.2004 mentioning the charges and calling the F.P. Shop dealer to submit explanation within one week after receipt of the show cause notice. It was also mentioned in the show cause notice

that action will be taken for cancellation on the material available on record, if explanation is not filed within one week after receipt of the show cause notice. The F.P. Shop dealer has filed her explanation on 27.7.2004.

The Revenue Divisional Officer, Markapur has also issued notice to the F.P.Shop dealer to attend on 4.10.2004 for personal hearing. The F.P. Shop dealer also appeared before the Revenue Divisional Officer, Markapur on 4.10.2004 and represented her grievances to the Revenue Divisional Officer, Markapur stating that she has distributed E.Cs properly and issued commodities at the Government rate fixed.

The Revenue Divisional Officer, Markapur after perusal of the explanation submitted by her and also basing on the records available, cancelled the authorization of the F.P. Shop dealer by order dt.9.10.2004.

In view of the above, there is no reason to interfere with the orders passed by the Revenue Divisional Officer, Markapur dt. 9.10.2004 and the orders passed by the Joint Collector, Ongole dt.17.2.2005. The revision petition is hereby dismissed admitting the cancellation orders of Revenue Divisional officer, Markapur dt.9.10.2004 and also appellate orders of Joint Collector, Ongole in Rc.CS2/4617/2004, dt.17.2.2005 dismissing the appeal filed by the revision petitioner."

In our opinion, the order passed by respondent No.3 cancelling the authorization of the appellant suffers from patent violation of the rules of natural justice and the learned Single Judge gravely erred by refusing to annul the same. It is not in dispute that the report of the Mandal Revenue Officer, which formed the basis of the charges, was not supplied to the appellant. In **K. Radha Krishna Naidu vs. Director of Civil Supplies, Hyderabad and others**, it was held that the primary report on the basis of which the charges were framed by the Licencing Authority against the dealer, being not furnished to the dealer, vitiates the proceedings due to violation of the principles of natural justice and absence of sufficient opportunity to the dealer to defend his case effectively. It was further held that the reasonable opportunity should be real and effective and simply because the petitioner submitted his explanation, it does not fulfil the requirement of reasonable opportunity, more so, when the show cause notice would clearly indicate that the only basis is the report. In that case the petitioner therein had been given opportunity of personal hearing but even then the Court held that the opportunity was not real inasmuch as the basic

document had not been supplied to the dealer. I n **S. Malla Reddy vs. M. Vijayalakshmi and others** this Court held that the authorization of fair price shop could not have been cancelled on the basis of vague notice.

We are further of the view that the failure of respondent No.3 to consider the explanation of the appellant in a correct perspective and failure to assign reasons for holding that the allegations levelled against her have been proved, has the effect of vitiating the order of cancellation.

In so far as the orders passed by respondents 1 and 2 are concerned, we are satisfied that even though the two officers had tried to fill in the lacunae in the order of cancellation, the same cannot be relied upon for upholding an illegal order passed by the competent authority.

For the reasons mentioned above, the appeal is allowed. The order of the learned Single Judge is set aside. Orders dated 9.10.2004, 17.2.2005 and 29.5.2005 passed by respondents 3, 2 and 1 respectively are also quashed with the direction to the Revenue Divisional Officer, Markapur to supply copy of the report of the Mandal Revenue officer, Pullalacheruvu to the appellant. The needful be done within one month from the date of receipt of a copy of this order. Within next two weeks, the appellant may file her reply. Thereafter, the competent authority shall be free to pass appropriate order in accordance with law. Till the passing of appropriate order, the appellant shall be allowed to continue to operate the fair price shop. However, it is made clear that if the order of the Revenue Divisional Officer is against the appellant, then she shall not be entitled to continue to operate the fair price shop.

G. BHAVANI PRASAD, J

25th January, 2006

G.S. SINGHVI, CJ

Svv/vtv